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**PROPOSED AMENDMENTS
TO THE REGULATION UNDER
THE SECURITIES ACT (ONTARIO)
REGARDING ENTRY INTO AND OWNERSHIP OF
THE ONTARIO SECURITIES INDUSTRY**

ONTARIO SECURITIES COMMISSION

MINISTRY OF FINANCIAL INSTITUTIONS



February 27, 1987



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February 27, 1987

PROPOSED AMENDMENTS
TO THE REGULATION
THE SECURITIES ACT (ONTARIO)
REGARDING ENTRY INTO AND REMOVAL OF
THE ONTARIO SECURITIES EXCHANGE



NOTICE

Proposed Amendments to the Regulation Under the Securities Act (Ontario) Regarding Entry Into and Ownership of the Ontario Securities Industry

On December 4, 1986, the Honourable Monte Kwinter, Minister of Financial Institutions, announced in the Ontario Legislature that, effective June 30, 1987, major revisions would be made to the rules governing entry into and ownership of the domestic securities industry [(1986), 9 OSCB 6727].

The Minister announced that the rules to be implemented through amendments to the Regulation promulgated under the Securities Act (Ontario) would liberalize existing ownership rules applicable to registrants under the Act, impose a universal registration system on all those in the business of dealing in securities and create a new code of conduct to regulate conflicts of interest and self-dealing in the securities industry.

This publication contains the proposed amendments to the Regulation together with a commentary on their application.

The draft amendments comprise three new Parts of the Regulation as well as revisions to two existing Parts. The changes to the ownership rules applicable to registrants are to be implemented by the deletion of existing non-resident ownership rules from Part V, the creation of new non-resident ownership rules in Part XI and the inclusion of a foreign dealer category in Part X to govern de novo entry by non-residents. The universal registration provisions are implemented in Part X. A new code of conduct regulating conflicts of interest and self-dealing in the securities industry is created in Part XII.

Certain isolated amendments to the exemptions from the prospectus requirements are made in Part III.

Additional consequential amendments may be made to the Regulation or the Policy Statements of the Commission in connection with the implementation of the new rules.

The Commission is requesting comments on the proposed amendments to the Regulation by March 31, 1987. Comments should be sent to:

The Secretary,
Ontario Securities Commission,
Suite 1800, P.O. Box 55,
20 Queen Street West,
Toronto, Ontario,
M5H 3S8

Comments received will be made available for public inspection unless confidentiality is specifically requested.

Regulation

A. AMENDMENTS TO PART V OF THE REGULATION

PART V

REGISTRATION REQUIREMENTS

Interpretation

84. Paragraphs 10, 17, 19, 21, 22, 23, 25, 26a and 27 of section 84 are revoked.

...

Categories of Registration

86. Every person or company that is required to register as a dealer shall be registered and classified into one or more of the following categories:

1. Broker, being a person or company that is registered to trade in securities in the capacity of an agent or principal, which person or company is a member of a stock exchange in Ontario recognized by the Commission.
2. Financial intermediary dealer, being a financial intermediary that is registered solely for the purpose of trading in securities in accordance with section 181.
3. Foreign dealer, being a person or a company that is registered solely for the purpose of trading in securities in accordance with section 182.
4. International dealer, being a person or company that is registered solely for the purpose of trading in securities in accordance with section 180.
5. Investment dealer, being a person or company that is a member, branch office member or associate member of the Ontario District of the Investment Dealers' Association of Canada, which person or company engages either for the whole or part of his or its time in the business of trading in securities in the capacity of an agent or principal.
6. Limited market dealer, being a person or company that is registered solely for the purpose of trading in securities in accordance with section 179.
7. Mutual fund dealer, being a person or company that is registered solely for the purpose of trading in the shares or units of mutual funds.
8. Scholarship plan dealer, being a person or company that is registered solely for the purpose of trading in securities of a scholarship or educational plan or trust.
9. Securities dealer, being a person or company that is registered for trading in securities and engages either for the whole or part of his or its time in the business of trading in securities in the capacity of an agent or principal.
10. Security issuer, being an issuer that is registered for trading in securities for the purpose of distributing securities of its own issue solely for its own account.

Commentary

Part V is amended to delete the existing non-resident ownership rules applicable to registrants. In addition, new categories of registration, for both dealers and advisers, have been created to facilitate new registration requirements.

The definitions in section 84 relating to the current non-resident ownership rules are revoked. New dealer ownership rules appear in Part XI.

Section 86 is amended to delete the defunct broker-dealer category and to introduce four new categories of dealer registration: financial intermediary dealer, foreign dealer, international dealer and limited market dealer. The section referred to in each of the new categories sets forth the trades permitted to be made by the registrant, eligibility criteria and conditions of registration.

Regulation

87. Every person or company that is required to register as an adviser shall be registered and classified into one or more of the following categories:

1. Financial adviser, being a person or company that engages in or holds himself or itself out as engaging in the business of advising others as to investing in or the buying or selling of securities on a basis that does not require his or its classification in another category of adviser.
2. Investment counsel, being a person or company that engages in or holds himself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of specific securities or that is primarily engaged in giving continuous advice as to the investment of funds on the basis of the particular objectives of each client.
3. Portfolio manager, being a person or company that is registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by one or more clients.
4. Securities adviser, being a person or company that holds himself or itself out as engaging in the business of advising others either through direct advice or through publications or writings, as to the investing in or the buying or selling of specific securities, not purporting to be tailored to the needs of specific clients.

88. (1) Every person or company granted registration as a broker, investment dealer or securities dealer shall be deemed to have been granted registration as an underwriter.

(2) Every person or company granted registration as a mutual fund dealer, scholarship plan dealer or security issuer shall be deemed to have been granted registration as an underwriter for the purpose of distributing the securities in which it is registered to trade.

(3) Every person or company granted registration as a financial intermediary dealer, foreign dealer, international dealer or limited market dealer shall be deemed to have been granted registration as an underwriter to the extent permitted by section 181, section 182, section 180 or section 179, respectively.

...

Conditions of Registration — General

90. No registration or renewal of registration shall be granted unless the applicant has complied with the applicable requirements of this Regulation at the time of the granting of the registration or renewal of registration.

91. Each registrant shall comply with the applicable requirements of this Regulation and the failure to do so shall be considered by the Commission in any proceedings under section 26 of the Act.

...

92. (2) For the purposes of subsection (1), except where either registrant referred to in that subsection is a limited market dealer, affiliated companies shall be treated as one company.

...

Non-Resident Ownership Restrictions

132 to 136. Sections 132 to 136 are revoked.

Commentary

The definition of “adviser” in paragraph 1 of subsection 1(1) of the Act is broader in scope than the existing categories of registration available to an adviser. Section 87 is amended to provide a new category of registration, that of financial adviser, for an adviser whose activities are not clearly the subject of existing categories of registration.

Section 88 is amended to provide each category of dealer with an appropriate exemption from the requirement to register as an underwriter.

Sections 90 and 91 are amended to require compliance with the applicable requirements of the Regulation, rather than Part V alone, because additional requirements are imposed by the new Parts of the Regulation.

Subsection 92(2) is amended to prohibit common ownership of affiliated registrants if one of the affiliated companies is a limited market dealer. Common ownership of registrants that are not affiliates is prohibited by subsection 92(1).

Regulation

Further Exemptions from Registration Requirements

...

140. Registration is not required in respect of a trade,

(a) of the kind referred to in section 14; ...

Commentary

Clause 140(a) is amended to delete references to sections 16 and 17, which were not appropriate registration exemptions.

Regulation

B. ADDITIONAL PARTS OF THE REGULATION

PART X

UNIVERSAL REGISTRATION

Interpretation

176. For greater certainty, this Part,

- (a) imposes requirements for registration of market intermediaries additional to requirements for registration in the Act and any other Part of this Regulation; and
- (b) does not provide exemption from registration for any trade, or exemption from the obligation to file a preliminary prospectus or a prospectus in connection with any distribution, in respect of which the Act or any other Part of this Regulation requires that registration be obtained or a preliminary prospectus or a prospectus be filed.

177.(1) In this Part,

- 1. “designated institution” means,
 - i. a financial intermediary,
 - ii. the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada),
 - iii. a subsidiary of any company referred to in subparagraph i or ii, where the company beneficially owns all of the voting securities of such subsidiary,
 - iv. the Government of Canada or any province or territory of Canada,
 - v. any municipal corporation or public board or commission in Canada, or
 - vi. a company or person, other than an individual, recognized by the Commission as an exempt purchaser;
- 2. “distributed primarily abroad” means, in respect of any securities, distributed by means of a distribution at the completion of which 75 per cent of the securities being distributed have come to rest outside of Canada;
- 3. “financial intermediary” means,
 - i. a bank to which the *Bank Act* (Canada) applies,
 - ii. a loan corporation or trust company registered under the *Loan and Trust Corporations Act*,

Commentary

Part X implements the universal registration system. Each person or company acting as a “market intermediary” (as defined in paragraph 8 of subsection 177(1)) must be registered as a dealer or a salesman, partner or officer of a registered dealer (subsection 178(1)). Part X also sets forth the permitted activities, eligibility criteria and conditions of registration for each of the four new categories of registration available to “market intermediaries” that are not currently registered. Those categories are limited market dealer (section 179), international dealer (section 180), financial intermediary dealer (section 181) and foreign dealer (section 182).

Section 176 indicates that the new “market intermediary” registration requirements are in addition to the existing registration requirements and that they have no impact on the rules that determine whether and when a prospectus must be filed for a distribution of securities.

The definition of “designated institution” is used to determine with whom an international dealer may trade “unlisted securities” (clause 180(1)(b)) or “foreign securities” (clause 180(1)(c)). The definition is also used to limit the application of certain of the conflict of interest rules contained in Part XII.

The definition of “designated institution” is also used to determine which “unlisted securities” may be traded by an international dealer to “designated institutions” (clause 180(1)(b)).

The definition of “distributed primarily abroad” is used to qualify which “unlisted securities” may be traded by an international dealer to “designated institutions” (clause 180(1)(b)).

The definition of “financial intermediary” is used to describe which regulated financial institutions may be registered as financial intermediary dealers (section 181).

Regulation

- iii. an insurance company licensed under the *Insurance Act*,
 - iv. a credit union within the meaning of the *Credit Unions and Caisses Populaires Act*, and
 - v. a corporation to which the *Co-operative Corporations Act* applies;
4. “foreign security” means,
- i. a security issued by an issuer incorporated, formed or created under the laws of a jurisdiction other than Canada or any province or territory of Canada,
 - ii. a security issued by any country other than Canada or any political division thereof,
 - iii. a debt security denominated in a currency other than Canadian dollars and issued by an issuer incorporated, formed or created under the laws of Canada or any province or territory of Canada or by the Government of Canada or any province or territory of Canada that has been distributed primarily abroad, or
 - iv. a security designated by the Commission as a foreign security,
other than,
 - v. a listed security, or
 - vi. a security designated by the Commission not to be a foreign security;
5. “fully-registered dealer” means a person or company that is registered as a dealer with a registration without restriction as to trading activities;
6. “interlisted security” means a listed security that is posted or otherwise available for trading on a stock exchange outside Canada, or other organized market outside Canada recognized by the Commission;
7. “listed security” means a security issued and posted or accepted for listing, conditional or otherwise, and posting on a stock exchange, or other organized market, in Canada recognized by the Commission;

Commentary

The definition of “foreign security” is used to determine which securities may be traded by an international dealer with “designated institutions” (clause 180(1)(c)).

The term “fully-registered dealer” excludes dealers registered under the Act in a restricted category — for example, a scholarship plan dealer or mutual fund dealer. An example of the use of the term “fully-registered dealer” is contained in subsection 178(5).

The definition of “interlisted security” is used to designate the type of securities that may, in certain circumstances, be traded by registered salesmen of non-registered affiliates of foreign dealers (subsection 182(5)). “Interlisted securities” include securities traded on stock markets or on other organized markets, such as the market made in the United States by the automated quotation system of the National Association of Securities Dealers (NASDAQ). Only those organized markets recognized by the Commission are included in the definition.

The definition of “listed security” is used to limit the scope of a “foreign security” and to define “interlisted security” and “unlisted security”.

Regulation

8. “market intermediary” means a person or company that engages or holds himself or itself out as engaging in the business of trading in securities as principal or agent, other than trading in securities purchased solely for the purpose of investment; provided that, without limiting the generality of the foregoing, a person or company is deemed to be a “market intermediary” if that person or company engages or holds himself or itself out as engaging in the business of,
 - i. entering into agreements or arrangements with underwriters or issuers, in connection with distributions of securities, to purchase or sell such securities,
 - ii. participating in distributions of securities as a selling group member,
 - iii. making a market in securities, or
 - iv. trading in securities with accounts fully managed by the person or company as agent or trustee;
9. “non-resident” has the meaning set forth in paragraph 2 of subsection 184(1);
10. “selling group member” means, in respect of a distribution, a person or company whose interest in the distribution is limited to receiving the usual and customary distributor’s or seller’s commission payable by an underwriter or issuer;
11. “short term debt security” means a debt security the principal amount of which is payable on demand or which matures by its terms on, or is renewable at the option of the issuer to, a date not more than 12 months after the date of the issue thereof or, in the case of a debt security that has been renewed otherwise that at the option of the issuer, the date of such renewal; and
12. “unlisted security” means a security other than a listed security.

(2) For the purposes of this Part, any reference to trading in securities with a designated institution means trading with that designated institution acting as principal, but not as underwriter.

Registration of Market Intermediaries

178.(1) No person or company shall act as a market intermediary unless,

- (a) the person or company is,
 - i. registered as a dealer, or
 - ii. registered as a salesman or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
- (b) the registration has been made in accordance with the Act and this Regulation and the person or company has received written notice of the registration from the Director, and where the registration is subject to terms and conditions, the person or company complies with such terms and conditions; and
- (c) the person or company acts in accordance with the Act and this Regulation.

Commentary

The definition of “market intermediary” is central to Part X. Under subsection 178(1), “market intermediaries” and their officers, partners and salesmen must be registered. The definition of “market intermediary” in general excludes those who are not in the business of trading and those who, regardless of whether they are in the business of trading, trade solely for the purpose of investment. Notwithstanding the trading versus investment distinction that is fundamental to the definition, certain activities have been deemed to be activities of a “market intermediary”, whether or not a case can be made that they are carried on for investment purposes. These activities are:

1. activities commonly known as “sub-underwriting” (subparagraph i);
2. participating as a selling group member (subparagraph ii);
3. making a market in securities (subparagraph iii); and
4. trading with fully managed accounts, regardless of whether the agent or trustee is a “financial intermediary” (subparagraph iv).

The definition of “short term debt security” is used to specify a type of securities that may be traded by a financial intermediary dealer (subclause 181(1)(a)(i)). The definition means, in general, a debt security (as defined in clause 1(2)(a) of the Regulation) having an original term to maturity of not more than 12 months.

The definition of “unlisted security” is used to identify a type of securities that may be traded by an international dealer with a “designated institution” (clause 180(1)(b)).

Subsection 177(2) provides that where references are made to trades with a “designated institution”, those references mean trades where the “designated institution” purchases as principal and not as a conduit to other purchasers. An example of the application of subsection 177(2) is in clause 180(1)(b), which regulates trading by international dealers with “designated institutions.”

Subsection 178(1) contains the basic requirement of Part X, which is that any person or company acting as a “market intermediary” must be registered to do so.

The registration requirement applies to those who currently act as “market intermediaries” on an unregistered basis in reliance on exemptions contained in section 34 of the Act and in the Regulation. It applies to both entities that act as “market intermediaries” and their officers, partners and salesmen. Subsection 178(1) thus implements the universal registration system.

Those already registered as a dealer or salesman, partner or officer of a dealer may be exempt from such registration depending upon the scope of their existing registration. Subsection 178(5) limits the exemption from registration of a “market intermediary” to those otherwise registered as “fully-registered dealers” and to those other dealers whose existing registration permits them to act in respect of the trade in question.

Regulation

(2) For greater certainty, the exemptions contained in subsections 34(1) and 34(2) of the Act or in any other Part of this Regulation do not, subject to subsection (3), exempt any person or company that acts as a market intermediary from registration in accordance with subsection (1).

(3) Subsection (1) does not apply to a person or company acting as a market intermediary in respect of,

- (a) a trade referred to in paragraph 6, 8, 19, 20 or 22 of subsection 34(1) of the Act (as modified from time to time by any other Part of this Regulation);
- (b) a trade in securities referred to in paragraph 5, 6, 7, 10, 11, 12, 13 or 14 of subsection 34(2) of the Act (as modified from time to time by any other Part of this Regulation);
- (c) a trade in securities of a private mutual fund as defined in subparagraph i of paragraph 32 of subsection 1(1) of the Act; or
- (d) a trade in securities referred to in clause 14(c) or clause 140(b).

Commentary

Subsection 178(2) confirms that the obligation to register under subsection 178(1) applies regardless of the registration exemptions otherwise available under the Act or the Regulation.

Subsection 178(3) removes the obligation to register under subsection 178(1) in respect of certain trades that are currently exempt from registration under section 34 of the Act or the Regulation. Subsection 178(3) thus defines the portion of the “exempt market” available to unregistered “market intermediaries” upon the implementation of the universal registration system.

The trades that continue to be exempt from registration requirements for “market intermediaries” are as follows:

1. pledges of securities by a control person (paragraph 6 of subsection 34(1) of the Act);
2. trades in a security occasionally transacted by employees of a registered dealer who are designated as non-trading employees (paragraph 8 of subsection 34(1) of the Act);
3. trades in securities of an issuer with its employees (paragraph 19 of subsection 34(1) of the Act);
4. trades in securities of an issuer that are required to facilitate its incorporation or organization (paragraph 20 of subsection 34(1) of the Act);
5. trades in commodity futures by a hedger through a dealer (paragraph 22 of subsection 34(1) of the Act);
6. trades in mortgages offered for sale by a registered mortgage broker (paragraph 5 of subsection 34(2) of the Act);
7. trades in conditional sales contracts, if not sold to an individual (paragraph 6 of subsection 34(2) of the Act);
8. trades in securities of educational, charitable, religious or recreational organizations (paragraph 7 of subsection 34(2) of the Act);
9. trades in securities of a private company that are not offered for sale to the public (paragraph 10 of subsection 34(2) of the Act);
10. trades in securities issued, upon certain conditions, by prospectors, prospecting syndicates, mining companies or mining exploration companies (paragraphs 11, 12, 13 and 14 of subsection 34(2) of the Act);
11. trades in securities of private mutual funds operated as investment clubs (paragraph 3 of subsection 34(2) of the Act, as modified);
12. trades in securities to or among promoters of an issuer (clause 14(c) of the Regulation); and
13. trades in securities effected through electronic links between recognized stock exchanges where the parties are registered dealers (clause 140(b) of the Regulation).

While subsection 178(3) defines the remaining “exempt market” for “market intermediaries”, those who are not “market intermediaries” — generally, those not in the business of securities dealing, those investing and most issuers — can continue to rely on the exemptions from registration currently contained in section 34 of the Act and other Parts of the Regulation.

Regulation

(4) Subsection (1) does not apply to a lawyer or accountant where the performance of the service as a market intermediary is solely incidental to his principal business or occupation as a lawyer or accountant.

(5) For the purposes of subsections (1) and (3) and any other provision of the Act or this Regulation, any reference to a registered dealer means, in respect of any trade in securities, a fully-registered dealer or any other dealer with a registration that permits it to act as a dealer in respect of such trade.

Limited Market Dealer Registration

179.(1) A limited market dealer may act as a market intermediary solely for the purpose of trading in securities in respect of which registration as a dealer or underwriter was not required under the Act (as deemed to be modified by sections 19e and 19f of this Regulation) and this Regulation on June 29, 1987.

(2) No financial intermediary may register as a limited market dealer.

(3) The conditions of registration applicable to a limited market dealer and to the salesmen, partners and officers of a limited market dealer shall be those applicable to an investment dealer and to the salesmen, partners and officers of an investment dealer, unless modified in a particular case by the Director where he is satisfied that,

- (a) the modification would be consistent with restrictions as to trading activities applicable to the particular limited market dealer; and
- (b) to do so would not be prejudicial to the public interest.

International Dealer Registration

180.(1) An international dealer may act as a market intermediary solely for the purposes of:

- (a) carrying on in Ontario those activities, other than sales of securities, that are reasonably necessary to facilitate a distribution of securities that are distributed primarily abroad;
- (b) trading with a designated institution in unlisted securities, where the unlisted securities are or were, as the case may be, distributed primarily abroad and the international dealer or an affiliate thereof is or was, as the case may be,
 - (i) an underwriter or selling group member in a contractual relationship with the issuer or an underwriter in respect of the distribution, and
 - (ii) licensed or otherwise permitted to effect the distribution in each jurisdiction in which the international dealer or the affiliate thereof is effecting or effected, as the case may be, the distribution; or
- (c) trading with a designated institution in foreign securities if the international dealer or an affiliate thereof is licensed or otherwise permitted to trade the foreign securities on a stock exchange or other organized market in any country other than Canada;

Commentary

Subsection 178(4) provides an exemption from the obligation to register under subsection 178(1) for a lawyer or accountant acting as a “market intermediary” where the activity is solely incidental to his professional practice.

Subsection 178(5) limits references to a “registered dealer” in the Act or the Regulation to fully-registered dealers unless the context otherwise permits a broader interpretation.

Subsection 179(1) specifies the activities that may be carried on by a limited market dealer. These activities are effectively limited to the trades listed in section 34 of the Act and section 140 of the Regulation immediately prior to these amendments coming into force, except for the proposed amendments in sections 19e and 19f of the Regulation. The limited market dealer category will thus include all those participants in the current exempt market, other than those required to register in the financial intermediary dealer, foreign dealer or international dealer categories.

Subsection 179(2) provides that a “financial intermediary” is not eligible for registration as a limited market dealer. Additional restrictions on ownership of a limited market dealer are contained in Part XI. Subsection 186(1) of that Part limits non-resident ownership of a dealer, including a limited market dealer.

Subsection 179(3) permits the application to limited market dealers of the same conditions of registration that are applicable to investment dealers. Given the scope of the activities that may be carried on by limited market dealers, however, subsection 178(3) expressly recognizes that modification may be appropriate in certain cases. For example, where a limited market dealer restricts its activities to those of an agent rather than a principal and does not hold securities or funds of clients, the Director may exempt it from the capital requirements otherwise applicable. Where the limited market dealer is not active in the retail market, proficiency requirements may be relaxed.

Subsection 180(1) identifies those activities that may be undertaken by an international dealer.

Clause 180(1)(a) permits pre-distribution activities in Ontario with respect to offerings that are ultimately “distributed primarily abroad”.

Clause 180(1)(b) permits international dealers to trade with “designated institutions” in “unlisted securities” only where the securities are or have been “distributed primarily abroad” and the international dealer or an affiliate is or was a participant in the offering and is or was licensed to effect the distribution. This clause thus permits both primary and secondary market trading by international dealers in securities that are being or were distributed in foreign countries.

Clause 180(1)(c) provides that international dealers may trade with “designated institutions” in “foreign securities” if the international dealer or affiliate thereof is permitted to trade such securities abroad.

Regulation

if the international dealer is acting in accordance with the legislation and regulations of each jurisdiction that govern the particular distribution or trading, as the case may be.

(2) No person or company may register as an international dealer unless the Director is satisfied that the person or company carries on the business of a dealer and underwriter in a country other than Canada.

(3) An international dealer, as a condition of registration, shall file with the Commission such reports as the Commission shall from time to time prescribe.

(4) An international dealer that is affiliated with a fully-registered dealer, a foreign dealer or a financial intermediary dealer may act as a market intermediary for the purposes of trading in securities in accordance with subsection (1) without compliance with subsection (3) if the fully-registered dealer, the foreign dealer or the financial intermediary dealer, as the case may be, files the reports in respect of the international dealer that are required by subsection (3).

(5) Notwithstanding subsection 178(1), no salesman, partner or officer of an international dealer is required to register to act on behalf of the international dealer in respect of trading in securities in accordance with subsection (1).

Financial Intermediary Dealer Registration

181.(1) A financial intermediary dealer may act as a market intermediary solely for the purposes of:

- (a) trading as principal in,
 - (i) short term debt securities,
 - (ii) debt securities of or guaranteed by the Government of Canada or any province or territory of Canada, and
 - (iii) debt securities referred to in subparagraph (b) of paragraph 1 of subsection 34(2) of the Act;
- (b) carrying on those activities, other than purchases or sales of securities, reasonably necessary to facilitate a trade in securities by or to a customer of the financial intermediary dealer if a registered dealer, other than a financial intermediary dealer, acts as principal or agent in connection with the trade;
- (c) trading in securities that have been pledged, mortgaged, or otherwise encumbered, in good faith as collateral for a *bona fide* debt owed to the financial intermediary dealer and that are offered for sale and sold to a designated institution for the purpose of liquidating such debt;

Commentary

Subsection 180(2) provides that the international dealer category of registration is restricted to persons or companies carrying on the business of both a dealer and underwriter abroad.

Subsection 180(3) provides that the only condition of registration applicable to an international dealer is a reporting requirement. Certain aspects of the code of conduct governing conflicts of interest and self-dealing contained in Part XII are also applicable to international dealers.

Subsection 180(4) provides that the reporting requirements applicable to an international dealer may be satisfied by an affiliate of the international dealer that is otherwise registered.

Subsection 180(5) provides that no registration will be required for salesmen, partners or officers of an international dealer. Where a salesman of an international dealer that is affiliated with a foreign dealer wishes to participate, not only in the trades permitted by subsection 180(1), but also in a trade of “interlisted securities” with a “designated institution” as permitted by subsection 182(5), registration of the salesman will be required.

Subsection 181(1) prescribes those activities that may be carried on directly by a financial intermediary dealer. Any other securities market intermediation activities sought to be carried on by a financial intermediary dealer must be carried on in a subsidiary or affiliate. The category of financial intermediary dealer replaces the existing Type II dealer and order execution access dealer categories in which certain financial institutions are currently registered.

Clause 181(1)(a) permits both underwriting of and secondary trading as principal in (i) all “short term debt securities”, regardless of whether the issuer is a commercial or governmental entity; (ii) debt securities of or guaranteed by a government in Canada; and (iii) debt securities of domestic municipal corporations.

Clause 181(1)(b) permits a financial intermediary dealer and its employees to facilitate trades made by its securities subsidiary or another registered dealer. Under this clause, a financial intermediary dealer will be able to make limited use of its branch network to deal with retail customers who seek to purchase or sell securities. The facilitation of these trading activities will be available to financial intermediary dealers that put in place, in consultation with the Director of the Commission, an appropriate system of supervision of its officers and employees, as contemplated by subsection 181(5).

Clause 181(1)(c) provides that a financial intermediary dealer may dispose of securities pledged to it as collateral if it sells them to a “designated institution”. Liquidation otherwise than to a “designated institution” must be made through a fully-registered dealer, which may include a securities subsidiary of the financial intermediary dealer.

Regulation

- (d) distributing debt securities in reliance upon clause 71(1)(a) of the Act if the trading is,
 - (i) with financial intermediaries that, under the legislation and regulations that govern their activities, have the authority to purchase or to invest in such debt securities,
 - (ii) in connection with the assembling of a syndicate or consortium of such financial intermediaries, and
 - (iii) within 60 days of the date of the issue of such debt securities;
- (e) in the case of a trust company registered under the *Loan and Trust Corporations Act*, trading in securities with accounts fully managed by it as agent or trustee; or
- (f) in the case of an insurance company licensed under the *Insurance Act*, trading referred to in clause 14(a);

if in so acting the financial intermediary dealer is acting in accordance with the legislation and regulations that govern its activities.

(2) No financial intermediary dealer may act as an adviser, other than a trust company registered under the *Loan and Trust Corporations Act* if the conditions of registration applicable to it, and to such of its officers as the Director shall from time to time determine, include those applicable to a portfolio manager and the officers thereof, respectively.

(3) For greater certainty, subsection (1) and subsection (2) do not prohibit an affiliate of a financial intermediary dealer from being granted registration as a dealer or adviser in accordance with the Act and this Regulation.

(4) No person or company that is not a financial intermediary may register as a financial intermediary dealer.

(5) A financial intermediary dealer, as a condition of registration, shall file with the Commission such reports as the Commission shall from time to time prescribe and shall comply with such other conditions of registration contained in Part V, other than sections 95 to 100, and such further conditions of registration, that the Director shall from time to time determine to be necessary to create and maintain supervisory and control procedures with respect to officers and salesmen of the financial intermediary dealer that achieve an adequate level of investor protection.

Commentary

Clause 181(1)(d) is designed to facilitate consortium lending by financial intermediaries. Where the loan is not a security or where the lead lender purchases the securities solely for the purpose of investment (and thus is not acting as a “market intermediary”) reliance on the clause is not required. Clause 181(1)(d) will apply in other cases to permit syndication of debt securities that are acquired by a lead lender without investment intent and that are syndicated within 60 days of issue. The clause is only applicable where the lead lender relies on the prospectus exemption contained in clause 71(1)(a) of the Act (for trades to financial institutions and governments); the clause does not apply in the case of a distribution by means of a prospectus.

Clause 181(1)(e) permits trust companies to trade directly (rather than through a securities subsidiary or affiliate) in securities with its fully managed accounts. Other financial intermediaries must carry on these activities in a securities subsidiary or affiliate.

Clause 181(1)(f) allows insurance companies to trade directly in group insurance and whole life insurance contracts, plans for reinvestment of policy dividends and proceeds, and variable life annuities (clause 14(a) of the Regulation).

Subsection 181(2) provides that the only financial intermediary which may act as an adviser is a trust company. This exception for trust companies is limited to those whose conditions of registration include those applicable to a portfolio manager. Other financial intermediaries will be required to carry on their advisory activities in a subsidiary or affiliate.

Subsection 181(3) clarifies that financial intermediary dealers may carry on securities activities beyond those referred to in subsection 181(1) through a subsidiary or affiliate, which would be appropriately registered as a dealer or adviser.

Subsection 181(4) provides that only a “financial intermediary” may register as a financial intermediary dealer.

Subsection 181(5) indicates the conditions of registration that are to be applicable to a financial intermediary dealer. While reports will be required to be filed with the Commission, any additional conditions of registration will depend upon the activities to be carried on by the financial intermediary dealer. The Director of the Commission, in conjunction with each financial intermediary dealer, will determine the other appropriate conditions of registration necessary to ensure that supervisory and control procedures have been created to achieve an adequate level of investor protection.

Banks currently engaging in certain limited securities related activities are registered by the Commission as Type II dealers, a category of registration which requires the registrant to settle appropriate registration conditions with the Commission staff on an individual basis to achieve an adequate level of investor protection. Where financial intermediary dealers engage directly in the limited facilitation of securities transactions permitted by clause 181(1)(b), a comparable system of registration — including one involving supervision by registered representatives of a securities subsidiary of the financial intermediary dealer — will be put in place.

Solvency-related conditions of registration that are contained in sections 95 to 100 of the Regulation (including net free capital rules and the requirement to participate in a contingency fund) will, however, not be applied to financial intermediary dealers themselves but will be applied to their securities subsidiary or affiliate.

Regulation

(6) Notwithstanding subsection 178(1), salesmen and officers of a financial intermediary dealer are required to register only to the extent that the Director shall from time to time determine that their registration is necessary to achieve an adequate level of investor protection and in the event of such registration the conditions of registration applicable to such salesmen and officers shall be such conditions as the Director shall from time to time determine to be necessary for such purpose.

(7) The Commission may exempt a financial intermediary dealer from the requirements of subsection (1) to permit the financial intermediary dealer to act as a market intermediary for purposes not referred to in subsection (1) where the Commission is satisfied that to do so would not be prejudicial to the public interest and in granting such exemption the Commission may impose such terms and conditions as are considered necessary.

Foreign Dealer Registration

182.(1) A foreign dealer may act as a market intermediary solely for the purposes of:

- (a) trading in securities in respect of which registration as a dealer or underwriter was not required under the Act (as deemed to be modified by sections 19e and 19f of this Regulation) or this Regulation on June 29, 1987; or
- (b) trading on a stock exchange in Ontario recognized by the Commission of which it is a member, as principal or as agent for a vendor of securities who is a designated institution or who is selling securities with aggregate net proceeds of disposition to the vendor of not less than \$250,000, with another registered dealer that is a member of the stock exchange, is acting as agent and does not have, and is not purchasing for a person or company who has, any agreement or arrangement with the foreign dealer with respect to similar trades.

(2) No person may register as a foreign dealer and no company may register as a foreign dealer unless the company is,

- (a) incorporated under the laws of Canada or any province or territory of Canada;
- (b) controlled by a non-resident that, to the satisfaction of the Director, carries on the business of a dealer or underwriter in a country other than Canada; and
- (c) is a member of a stock exchange in Ontario recognized by the Commission or a member, branch office member or associate member of the Ontario District of the Investment Dealers' Association of Canada.

(3) The conditions of registration applicable to a foreign dealer and to the salesmen and officers of a foreign dealer shall be those applicable to a broker or an investment dealer, as the case may be, and to the salesmen and officers thereof, respectively.

(4) Registration as a foreign dealer shall terminate on June 30, 1988 and an application by a foreign dealer for registration on that date as a broker or investment dealer, as the case may be, shall be considered to be an application for renewal of registration as a broker or investment dealer, respectively.

Commentary

Subsection 181(6) similarly provides that appropriate salesmen and officers of a financial intermediary dealer will be registered and will have registration requirements that are necessary to achieve an adequate level of investor protection. The scope of the registration will vary, in a manner similar to current Type II dealer registration, depending upon the activities to be carried out by the employee of the financial intermediary dealer.

Subsection 181(7) permits the Commission to expand the list of activities that may be carried on directly by a financial intermediary dealer. Where a financial intermediary is not permitted to carry on its existing securities activities in a subsidiary or affiliate, the Commission, on an interim basis, may permit it to carry on those activities directly.

Subsection 182(1) specifies those activities that may be carried on by a foreign dealer.

Clause 182(1)(a) provides that a foreign dealer may carry on only those activities previously not requiring registration as a dealer or underwriter. The range of these activities is, however, modified by sections 19e and 19f of this Regulation.

In addition, clause 182(1)(b) permits foreign dealers to engage in certain stock exchange trading beyond the stock exchange trading that is permitted under clause 182(1)(a). Clause 182(1)(b) allows foreign dealers to sell from their own portfolio and to trade on behalf of vendors who are “designated institutions” or otherwise selling securities having aggregate net proceeds of not less than \$250,000. Trades where the foreign dealer is purchasing as principal or is acting for a comparable purchaser are permitted under clause 182(1)(a).

Subsection 182(2) restricts registration as a foreign dealer to corporations controlled by non-residents that carry on the business of a dealer or underwriter abroad and that are members of The Toronto Stock Exchange or the Ontario District of the Investment Dealers’ Association of Canada.

Subsection 182(3) provides that the conditions of registration applicable to a foreign dealer will be the same as those applicable to investment dealers and brokers.

Subsection 182(4) is the “sunset” provision applicable to registration as a foreign dealer. This category of registration will terminate on June 30, 1988, at which time registrants in the category will be required to seek registration as either a broker or investment dealer, although on the basis that their applications will be considered to be renewals.

Regulation

(5) Notwithstanding subsection 178(1), until June 30, 1989, an affiliate of a registered dealer that is or was a foreign dealer is not required to obtain registration to carry on in Ontario those activities, other than purchases or sales of securities, that are reasonably necessary to facilitate a trade in interlisted securities with a designated institution if,

- (a) each salesman of such affiliate who takes part in such facilitation is registered on the same basis as salesmen of the registered dealer are required to be registered; and
- (b) the registered dealer acts as principal or agent in connection with the trade.

(6) The Commission may, upon the application of a person, other than an individual, that is an applicant for registration as a foreign dealer, exempt the person from the requirements of clause 2(a) where the person is formed or created under the laws of Canada or any province or territory of Canada and the Commission is satisfied that to do so would not be prejudicial to the public interest and in granting such exemption the Commission may impose such terms and conditions as are considered necessary.

Exemption

183. Except as otherwise provided in this Part, the Commission may exempt any person or company from the requirements of any provision of this Part where it is satisfied that to do so would not be prejudicial to the public interest and in granting such exemption the Commission may impose such terms and conditions as are considered necessary.

Commentary

Subsection 182(5) provides a transitional period during which foreign affiliates of a foreign dealer or former foreign dealer may continue to participate in the trading of “interlisted securities” with “designated institutions” in Canada. Until June 30, 1989, salesmen of affiliates of a foreign dealer or a former foreign dealer will be permitted to take part in facilitating a trade in “interlisted securities” with a “designated institution” if the salesmen register in the same way as salesmen of a foreign dealer and if the foreign dealer or former foreign dealer acts as principal or agent in connection with the trade.

Subsection 182(6) recognizes that it may be appropriate in certain circumstances to permit a foreign dealer to be a non-corporate entity and provides the Commission with power to exempt the applicant from the requirements of clause 182(2)(a).

Section 183 permits the Commission to exempt any person or company from the requirements of universal registration. This section could be used by the Commission to issue blanket rulings regarding the timing of implementation of the registration requirements, and the conditions of registration, applicable to those required to register in one of the new categories of dealer, including limited market dealers.

Regulation

**PART XI
DEALER OWNERSHIP RESTRICTIONS**

Interpretation

184.(1) In this Part,

1. “industry investor” means, in respect of a dealer,
 - i. the dealer’s full time officers and employees, or the full time officers and employees of an affiliate of the dealer that carries on securities related activities provided that such officers and employees of the affiliate devote their full time to the securities related activities,
 - ii. any other individual of the opposite sex to whom an individual referred to in subparagraph i is married or with whom such an individual is living in a conjugal relationship outside marriage,
 - iii. a company, if
 - A. individuals referred to in subparagraph i beneficially own and exercise control and direction over more than 50 per cent of each class or series of voting securities or participating securities of the company, and
 - B. industry investors with respect to the dealer beneficially own and exercise control and direction over all other voting or participating securities of the company,
 - iv. a trust, if
 - A. full direction and control of the trust including, without limitation, its investment portfolio and the exercise of voting and other rights attached to the securities contained in the investment portfolio, are maintained by individuals referred to in subparagraph i or ii, and
 - B. all beneficiaries of the trust are individuals referred to in subparagraph i or ii or their children, or are industry investors with respect to the dealer,
 - v. a registered retirement savings plan established under the *Income Tax Act* (Canada) by an individual referred to in subparagraph i or ii if control over the investment policy of the registered retirement savings plan is held by that individual and if no other person has any beneficial interest in the registered retirement savings plan,
 - vi. a pension fund established by the dealer for its officers and employees if the pension fund is organized so that full power over its investment portfolio and the exercise of voting and other rights attached to securities contained in the investment portfolio is held by individuals referred to in subparagraph i,
 - vii. the estate of an individual referred to in subparagraph i or ii for a period of one year after the death of such individual or such longer period as may be permitted by either the Director or, if notice of the longer period has been given to the Director and he has not objected thereto, the applicable self-regulatory organization of which the dealer is a member, if any, or

Commentary

Part XI contains the restrictions on ownership of registered dealers by non-residents for a one-year period commencing June 30, 1987. In addition, Part XI contains a requirement that the Commission be notified at least 21 days prior to any person or company beneficially owning or exercising control or direction over more than 5 per cent of any class or series of voting securities of a registered dealer (section 191).

The definition of "industry investor" determines which investors may own or exercise control over 5 per cent of the voting securities of a registered dealer without providing the Commission with advance notice of their holdings (section 191).

Regulation

- viii. any person or company referred to in subparagraph i, ii, iii, iv or v for a period of 90 days or such longer period as either the Director or, if notice of the longer period has been given to the Director and he has not objected thereto, the applicable self-regulatory organization of which the dealer is a member, if any, may permit after, in the case of subparagraph i, the individual, or, in any other case, the individual the relationship with whom qualifies such person or company as an industry investor, ceases to be in the employment of the dealer,

but any of the foregoing is an industry investor only if an approval for purposes of this definition has been given, and not withdrawn, by the board of directors or partners of the dealer and either the Director or, if notice of such approval by the board of directors or partners has been given to the Director and he has not objected thereto, the applicable self-regulatory organization of which the dealer is a member, if any;

- 2. “non-resident” means,
 - i. an individual who is not a resident Canadian,
 - ii. a company incorporated under the laws of a jurisdiction other than Canada or any province or territory of Canada,
 - iii. a person, other than an individual, formed or created under the laws of a jurisdiction other than Canada or any province or territory of Canada,
 - iv. a company or person controlled, directly or indirectly, by an individual or individuals referred to in subparagraph i, a company or companies referred to in subparagraph ii or a person or persons referred to in subparagraph iii; provided that, for the purposes of this subparagraph iv,
 - A. “control” includes control in fact, whether through another person or company or otherwise, and
 - B. a company or person, other than an individual, shall be deemed to be so controlled if, directly or indirectly, such an individual or individuals, such a company or companies or such a person or persons beneficially own, or exercise control or direction over, more than 33⅓ per cent of any class or series of voting securities or participating securities of such company or person, or
 - v. any other person or company designated by the Commission as a non-resident in accordance with subsection 188(1);
- 3. “parent company” means, in respect of a dealer, a company that beneficially owns all of the voting securities and participating securities of the dealer, or, where another company beneficially owns all of the voting securities and participating securities of that company, or any company in like relation thereto, the other company;
- 4. “participating security” means, in respect of a dealer, a security, including a debt security, of the dealer that,
 - i. entitles the holder to a dividend or other distribution of assets, otherwise than by way of return of capital, at a rate that is not fixed either in amount or by formula,

Commentary

The definition of “non-resident” is used to determine which individuals, persons or companies are non-residents for purposes of the new foreign ownership rule contained in subsection 186(1). Sub-paragraph iv of paragraph 2 of subsection 184(1) provides that an entity will be considered to be a “non-resident” if it is controlled in fact by a “non-resident”. While the definition deems control to exist when more than 33⅓ per cent of any class or series of voting securities or “participating securities” is beneficially owned or controlled by a non-resident, there is no minimum control threshold.

The definition of “parent company” is used to designate the company to which the non-resident ownership rules apply in the event that a registered dealer is part of a holding company structure (subsection 186(2)). The definition provides that the “parent company” is the top company in a holding company structure.

The definition of “participating security” is used to describe one of the two types of securities whose holding by “non-residents” is subject to the rules in section 186.

Regulation

- ii. entitles the holder to a dividend or other distribution of assets, otherwise than by way of return of capital, at a rate that is fixed by reference to a dividend or such a distribution of assets in respect of a security referred to in subparagraph i, or
- iii. entitles the holder to a dividend or other distribution of assets, otherwise than by way of return of capital, or to payment of interest, at a rate calculated by reference to the earnings, income or profits of the dealer, whether calculated on a before-tax or after-tax basis,

in any case, whether or not the security also entitles the holder to a dividend, a distribution of assets or payment of interest at a rate or in an amount that is otherwise fixed either in amount or by formula; and

5. “resident Canadian” means an individual who is,
- i. a Canadian citizen ordinarily resident in Canada,
 - ii. a permanent resident within the meaning of the *Immigration Act, 1976* (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he first became eligible to apply for Canadian citizenship, or
 - iii. a Canadian citizen not ordinarily resident in Canada who is a full-time employee of a company that is a subsidiary of a registered dealer of which more than 50 per cent of each class and series of the voting securities or participating securities are beneficially owned and over which control and direction are exercised by resident Canadians, where the principal reason for the residence outside Canada is to act as such an employee.

(2) This Part applies with necessary modifications to each registered underwriter that is not a registered dealer.

Non-resident Ownership

185. Each registered dealer, other than an individual, shall be a company incorporated, or a person formed or created, under the laws of Canada or any province or territory of Canada.

186.(1) No company or person, other than an individual, shall be granted registration or renewal of registration as a dealer if, directly or indirectly, non-residents beneficially own, or exercise control or direction over, more than 50 per cent of any class or series of voting securities or participating securities of the company or person.

(2) If a company that is an applicant for registration or renewal of registration as a dealer is a subsidiary of a parent company, subsection (1) applies in respect of voting securities and participating securities of the parent company rather than the company.

187. For the purposes of this Part,

- (a) a non-resident who is an individual shall be deemed to own beneficially all of the securities owned beneficially, or over which control or direction is exercised, by any relative of such non-resident or any other individual of the opposite sex to whom such non-resident is married or with whom such an individual is living in a conjugal relationship outside marriage and any relative of any such other individual who has the same home as such non-resident; and

Commentary

The definition of “resident Canadian” is used in the definition of “non-resident” to exclude certain individuals.

Section 185 provides that each registered dealer, other than an individual, regardless of ownership, must be incorporated or created under the laws of Canada or a province or territory of Canada. The residence of individuals who are registered dealers is governed by section 31 of the Act.

Subsection 186(1) contains the new restriction on ownership of registered dealers by “non-residents”. The restriction does not apply to advisers; from June 30, 1987, they will not be subject to any non-resident ownership rule.

Under subsection 186(2) the non-resident ownership rule is applicable to the top company in a holding company structure, or the “parent company”.

Regulation

- (b) if a security is owned by more than one owner and one or more of the owners is a non-resident, the security shall be deemed to be wholly owned by the non-resident.

188.(1) The Commission may, by order, designate any person or company for purposes of this Part as a non-resident if the person or company has a material relationship with a non-resident.

(2) The Commission shall not make any order under subsection (1) without first giving the registered dealer and the person or company affected an opportunity to be heard.

189.(1) No person or company shall be denied registration or renewal of registration as a dealer solely by reason of an agreement entered into prior to June 30, 1988 by a non-resident that requires or entitles the non-resident on or after that date to purchase, or to exercise control or direction over, any or all of the voting securities or participating securities of the dealer.

(2) For purposes of section 186, a non-resident does not exercise control or direction over voting securities or participating securities of a dealer that are beneficially owned by another person or company solely by reason of the existence of, or the exercise of rights under, a provision of a shareholders', partnership or other agreement between the non-resident and the other person or company that requires, or has the effect of requiring, the consent of the non-resident to fundamental changes to the constating documents, or in the business and affairs, of the dealer or to transactions not in the ordinary course of business of the dealer.

190.(1) Section 185 does not apply to,

- (a) an international dealer; or
- (b) a security issuer.

(2) Section 186 does not apply to a person or company that applies for registration or renewal of registration as,

- (a) a financial intermediary dealer;
- (b) a foreign dealer;
- (c) an international dealer;
- (d) a mutual fund dealer;
- (e) a scholarship plan dealer; or
- (f) a security issuer.

(3) Section 186 does not apply to a dealer that on January 1, 1987 was a non-resident controlled registrant as defined in paragraph 23 of section 84, as in force on that date.

Notice of Ownership

191.(1) No person or company, other than an industry investor in respect of a registered dealer who is not a non-resident, shall, directly or indirectly and whether alone or in combination with one or more other persons or companies, beneficially own or exercise control or direction over more than 5 per cent of any class or series of voting securities of the dealer unless the person or company and the dealer, if it has knowledge, gives 21 days' written notice to the Commission of such ownership or control or direction and the Commission has not informed the person or company or the dealer, as the case may be, within the period of 21 days that it objects to such ownership or control or direction.

Commentary

Subsection 189(1) permits “non-residents” to enter into agreements, or to acquire options, to purchase up to 100 per cent of a dealer, provided that such ownership is not acquired before June 30, 1988.

Subsection 189(2) clarifies that a “non-resident” whose ownership of securities of a dealer is in accordance with section 186 may enter into certain arrangements with other owners of the dealer that govern fundamental aspects of its business.

Subsection 190(1) provides that certain registered dealers need not be domestically incorporated.

Subsection 190(2) provides that the non-resident ownership restrictions are not applicable to certain categories of registered dealers.

Subsection 190(3) exempts the “grandfathered” foreign dealers from the foreign ownership rules. As a result of this subsection and the revocation of sections 132 to 136, these dealers will, from June 30, 1987, operate on the same basis as Canadian-owned dealers.

Subsection 191(1) requires advance notice by any person or company, other than a resident “industry investor”, prior to his acquisition of ownership or control or direction over more than 5 per cent of any class or series of voting securities of a dealer. Approval will be deemed to have been granted unless the Commission advises otherwise within 21 days of the receipt of notice.

Regulation

(2) The Commission may make a determination pursuant to subsection (1) that it objects to the ownership or to the exercise of control or direction referred to in that subsection by a non-resident that is otherwise not objectionable if it appears to the Commission that treatment as favourable for dealers to which this Regulation and the Act apply does not exist and will not be arranged in the jurisdiction or jurisdictions in which the non-resident principally carries on business either directly or through a subsidiary or of which the non-resident is a citizen, as the case may be.

(3) The Commission shall not make a determination pursuant to subsection (1) that it objects to any ownership or control or direction referred to in that subsection, other than a determination pursuant to subsection (2), without first giving the dealer and the person or company affected an opportunity to be heard.

(4) A person or company shall be deemed to have complied with subsection (1) upon compliance with section 114.

(5) Subsection (1) does not apply to,

- (a) a financial intermediary dealer;
- (b) an international dealer; or
- (c) a security issuer.

Miscellaneous

192. The Commission may exempt any person or company from the requirements of any provision of this Part where it is satisfied that to do so would not be prejudicial to the public interest and in granting such exemption the Commission may impose such terms and conditions as are considered necessary.

193. The provisions of this Part, other than sections 184, 185, 190, 191, 192 and this section, cease to apply on June 30, 1988.

Commentary

Subsection 191(2) permits the Commission to object under subsection 191(1) to a non-resident if reciprocal treatment is not provided in the home jurisdiction of the non-resident.

Subsection 191(4) provides that an applicant for registration need not provide separate notice under subsection (1) if it complies with the application procedures required by section 114.

Section 192 provides the Commission with the ability to exempt any person or company from the requirements of Part XI.

Section 193 contains the “sunset” rules applicable to the non-resident ownership restrictions. From June 30, 1988, the only substantive restrictions of Part XI that will continue to apply are the residence requirement (section 185) and the requirement that advance notice be provided to the Commission of 5 per cent ownership of a registered dealer (subsection 191(1)).

Regulation

PART XII CONFLICTS OF INTEREST AND SELF-DEALING

Interpretation

194. In this Part, every term defined in Part X or XI is used in this Part as so defined and,

1. “connected issuer” means, in respect of a registrant, any person or company that has, or any related issuer of which has, any indebtedness to, or other relationship with, the registrant, a related issuer of the registrant, or a director, officer or partner of the registrant or a related issuer of the registrant, that is material to either of them; provided that, where a person or company, directly or indirectly and whether alone or in combination with one or more other persons or companies, beneficially owns or exercises control or direction over more than 10 per cent of any class or series of voting securities of any other company or person, other than an individual, the person or company and the other company or person are deemed to have a relationship that is material to each of them;
2. “influence” means, in respect of a person or company, the power, directly or indirectly, to exercise a controlling influence over the management and policies of the company or person, other than an individual, or the activities of an individual, whether alone or in combination with one or more other persons or companies and whether through the beneficial ownership of voting securities, through one or more other persons or companies or otherwise; provided that,
 - i. any other person or company that, directly or indirectly and whether alone or in combination with one or more other persons or companies, beneficially owns or exercises control or direction over more than 20 per cent of any class or series of voting securities of the company or person, other than an individual, is deemed to influence, and
 - ii. subject to subsection 195(1), any other person or company not referred to in subparagraph i is deemed not to influence by virtue solely of beneficial ownership or the exercise of control or direction over voting securities;

Commentary

Part XII deals with the questions of conflicts of interest of, and self-dealing by, registrants. Its principal focus is on those conflicts of interest that may arise as a result of the abolition of the non-resident ownership rules and the industry ownership rules currently contained in Part V of the Regulation and the by-laws of the self-regulatory organizations.

Part XII imposes on registrants two general standards of behaviour that will apply to both conflicts of interest and self-dealing. These standards are contained in section 196.

Part XII also contains a number of specific rules with respect to particular trading and advising activities of registrants that potentially give rise to significant conflicts of interest. These rules address a variety of circumstances in which a registered dealer or registered adviser underwrites, trades in the secondary market in, advises with respect to, or recommends the purchase or sale of, its own securities or securities of issuers with which it has a significant relationship. These significant relationships include those that arise both by reason of ownership and in other ways. The rules, which are contained in sections 199 to 203, include the requirement that the registrant, prior to engaging in the particular activity, make appropriate disclosure to its customer or client of the potential conflict of interest. In the case of a distribution (or underwriting) of securities by means of a prospectus, additional disclosure is required and Forms 12, 13 and 14 are amended for this purpose.

In addition, Part XII contains a specific rule with respect to “networking” by registrants.

The definition of “connected issuer” identifies one of the two categories of issuers in whose securities trading and advising by registrants are regulated by Part XII. “Connected issuers” of registrants include all “related issuers” (as defined in paragraph 5 of section 194) and those that have a material relationship either with a registrant or a “related issuer” of the registrant. The definition, in its proviso, deems two parties to have a material relationship with each other where one owns or controls more than 10 per cent of any class or series of voting securities of the other. Where securities of a “connected issuer” are in the course of a distribution (or underwriting), sections 199, 202 and 203 require that underwriters and advisers to which the “connected issuer” is related make appropriate disclosure of the relationship before selling, or advising or recommending with respect to the purchase of, the securities.

The definition of “influence” is used to define those companies or persons that are “related issuers” of a registrant. In general, one party influences another party where the former exercises control over the latter. The definition provides, in subparagraph i, that where one party owns or directs the voting of more than 20 per cent of any class or series of voting securities of another party, the former is deemed to “influence” the latter.

Regulation

3. “networking arrangement” means an arrangement between a registrant, including a financial intermediary dealer, and a financial intermediary, whether or not a registrant, under which the registrant,
- i. offers for sale or sells to the public securities, goods or services as agent for or on behalf of the financial intermediary,
 - ii. offers for sale or sells to the public combined or integrated securities, goods or services a portion of which consists of securities, goods or services issued or provided by the financial intermediary, or
 - iii. cooperates with the financial intermediary in the joint offering for sale or sale of securities, goods or services, including by paying the financial intermediary a commission for referring to the registrant a customer or client to whom the registrant sells securities, goods or services;

but does not include trades in, or purchases or sales of, securities of the financial intermediary by the registrant on the same basis on which the registrant trades in the securities of issuers other than financial intermediaries;

4. “outside director” means, in respect of a registrant, any director of the registrant other than a director who,
- i. directly or indirectly and whether alone or in combination with one or more other persons or companies, beneficially owns or exercises control or direction over more than 5 per cent of any class or series of voting securities of the dealer or any related issuer of the dealer,
 - ii. is an officer or employee of the registrant or any related issuer of the registrant or has been an officer or employee of the registrant within two years of the date on which he became a director of the registrant,
 - iii. is a relative of an individual described in subparagraph i or ii,
 - iv. is any other individual of the opposite sex to whom an individual described in subparagraph i or ii is married or with whom such an individual is living in a conjugal relationship outside marriage and any relative of any such other individual who has the same home as such individual,
 - v. is engaged in, proposes to engage in, or has within two years of the date on which he became a director of the registrant engaged in, any material business or professional activities with or on behalf of the registrant or any related issuer of the registrant, or
 - vi. is a director, officer or employee of any person or company, or of any related issuer of any person or company, that is engaged in, proposes to engage in, or has within two years of the date on which he became a director of the registrant engaged in, any material business or professional activities with or on behalf of the registrant or any related issuer of the registrant;

Commentary

The definition of “networking arrangement” describes a variety of relationships between a registrant and a financial intermediary that involve the joint sale of securities, or provision of services, to the public. Section 204 regulates “networking arrangements” involving registrants.

Section 205 requires that registered dealers, in certain circumstances, have “outside directors” on their boards. Paragraph 4 of section 194 defines those directors that qualify as “outside directors”. Under subparagraphs v and vi, individuals who have material business or professional links to registrants do not qualify as “outside directors”.

Regulation

5. “related issuer” means, in respect of a person or company,
 - i. any other person or company that influences the person or company,
 - ii. any other person or company that is influenced by the person or company,
 - iii. any other person or company in like relation to a person or company referred to in subparagraph i or ii or any such other person or company, or
 - iv. any other person or company designated by the Commission as a related issuer of the person or company in accordance with subsection 195 (1);

6. “security” includes, in respect of an issuer,
 - i. a put, call, option or other right or obligation to purchase or sell securities of the issuer, and
 - ii. a security of any other issuer all or substantially all of the assets of which are securities of the issuer; and

7. “statement of policies” means, in respect of a registrant at any time, a statement prepared by the registrant that contains,
 - i. a full and complete statement of the current policies of the registrant regarding the activities in which it is prepared to engage as an adviser, dealer and underwriter in respect of securities of the registrant and of related issuers and connected issuers of the registrant,
 - ii. a current list of the related issuers of the registrant that are reporting issuers or that have distributed securities outside Ontario on a basis that, if they had done so in Ontario, would have made them reporting issuers, and
 - iii. the following text, or an expanded version thereof, in a conspicuous position and in bold face type not less legible than that used in the body of the statement:

The securities laws of the Province of Ontario require securities dealers and advisers, when they trade in or advise with respect to their own securities or securities of certain other issuers to which they, or certain other parties related to them, are connected, to do so only in accordance with particular disclosure and other rules. Where a dealer or adviser fails to comply with these rules, its customer or client will, in certain circumstances, have remedies for damages or rescission. Clients and customers should refer to the applicable provisions of these securities laws for the particulars of these rules and their rights or consult with a legal advisor.

Commentary

The definition of “related issuer” is used to identify the second category of issuers whose relationships with a registrant are such that trading or advising by the registrant in the securities of the “related issuer” require particular disclosure rules.

“Related issuers” are those that “influence” or are influenced by registrants or other “related issuers” of registrants. By reason of subparagraph iii of the definition, the term includes all members of corporate and other groups. Under subparagraph iv and subsection 195(1), the Commission has the power to designate any person or company as a “related issuer” of a registrant, even if that person or company does not fall within the definition of “related issuer”.

As is the case with a “connected issuer”, registrants that underwrite or advise with respect to securities of a “related issuer” in the course of a distribution of its securities must make appropriate disclosure to clients and customers. In addition, when a registrant trades in the secondary market in securities of a “related issuer” or advises or recommends with respect to the previously distributed securities of a “related issuer”, the registrant must also make appropriate disclosure. The rules relating to activities in securities of “related issuers” are contained in sections 199 to 203.

The term “security” as it applies to a particular issuer is expanded for purposes of Part XII. Certain securities issued by those other than “related issuers” and “connected issuers” can be equivalent to securities of “related issuers” and “connected issuers”; examples are puts and calls with respect to securities of those issuers and securities of single-purpose corporations which hold securities of public companies and issue securities of their own to the public.

The effect of the expanded definition of “security” is to deem such puts and calls (see subparagraph i) and such corporations’ securities (see subparagraph ii) to be securities of “related issuers” and “connected issuers”.

The definition of “statement of policies” describes the statement that is required by section 198 to be prepared by each registrant with respect to its willingness to participate in trading and advising activities in its own securities and securities of “related issuers” and “connected issuers.”

The “statement of policies” must also contain a list of publicly traded “related issuers” of the registrant (which is required by subparagraph ii of the definition) and a summary statement advising customers and clients of the registrant’s obligations, and the customers’ and clients’ rights, under Part XII (which is required by subparagraph iii of the definition).

Regulation

195.(1) The Commission may, by order, designate any person or company for purposes of this Part to be a related issuer of the registrant if the person or company has a material relationship with the registrant or any related issuer of the registrant.

(2) The Commission shall not make any order under subsection (1) without first giving the registrant and the person or company affected an opportunity to be heard.

General Duties

196.(1) Every registrant shall deal fairly, honestly and in good faith with its customers and clients.

(2) No registrant shall enter into any transaction with, or that directly or indirectly benefits, any related issuer of the registrant or any director, officer or partner of the registrant or of any related issuer of the registrant except on terms on which the registrant would be prepared to enter into a similar transaction with a similar company or person that is not a related issuer of the registrant or such a director, officer or partner, respectively.

197.(1) Every director, officer and partner of a registrant in exercising his powers and discharging his duties shall have due regard to the interests of the customers and clients of the registrant.

(2) No director, officer, partner or salesman of a registrant shall act on behalf of the registrant in connection with any transaction or other act of the registrant that is not in compliance with this Part.

Statement of Policies

198. Every registrant shall file and maintain with the Commission, and provide to its customers and clients free of charge, the statement of policies of the registrant.

Commentary

Subsection 195(1) permits the Commission to designate any person or company as a “related issuer” of a registrant, even if that person or company does not fall within the definition of “related issuer”.

Subsection 196(1) states the general standard that is required to be observed by every registrant in dealing with its customers and clients. This subsection codifies the “shingle theory” of the broker or dealer, which holds that, where a broker or dealer hangs up its shingle (or enters into the securities business), it represents to its customers and clients that it will deal fairly with them. The “shingle theory” has been accepted by Canadian courts as applying to securities dealers.

Subsection 196(2) contains a general rule with respect to self-dealing by registrants, or transactions by registrants with non-arm’s length parties. The subsection requires that such transactions be done on arm’s length terms.

Under corporate and partnership law, directors and officers and partners owe fiduciary duties to the corporation and their partners, respectively. Additional duties to, or to consider the interests of, shareholders and creditors are currently being developed as a matter of both statutory and common law. Subsection 197(1) clarifies that directors, officers and partners of a registrant must have due regard to the interests, not only of those to whom they clearly owe fiduciary duties, but also to their customers and clients.

The rules in Part XII are generally expressed to bind registered dealers and advisers. Subsection 197(2) prohibits the individuals who are responsible for managing and operating the business and the affairs of registered dealers and advisers from acting on behalf of their principals in connection with any transaction that contravenes Part XII.

The “statement of policies” is the basic new disclosure document that is required by Part XII. It is defined in paragraph 7 of section 194 as a statement of a registrant that discloses the extent to which it is willing to engage in activities in relation to its own securities and securities of “related issuers” and “connected issuers”. The statement is to be filed with, but not reviewed by, the Commission and is to be provided to customers and clients of the registrant free of charge. In practice, registrants would be likely to provide the statement of policies to their customers and clients when the latter open their accounts. Registrants must, however, promptly provide revised versions of the statement of policies if there is a change in the relevant policies or in the list of “related issuers”.

Regulation

Limitations on Underwriting

199.(1) No registrant shall act as an underwriter or selling group member in connection with a distribution of securities of the registrant or a related issuer or connected issuer of the registrant unless,

- (a) the distribution is made by means of a prospectus or an offering memorandum that contains the information required by items 5, 29A and 29B of Form 12, items 5, 32A and 32B of Form 13, or items 5, 29A and 29B of Form 14, as the case may be;
- (b) not later than the time at which the prospectus or the offering memorandum, as the case may be, is sent by prepaid mail or delivered to a purchaser of the securities, the registrant so sends or delivers to the purchaser the statement of policies of the registrant; and
- (c) the portion of the distribution underwritten by at least one other registrant in respect of which the issuer is not a related issuer or connected issuer is not less than the aggregate of the portions of the distribution underwritten by the registrant and each other registrant in respect of which the issuer is a related issuer or connected issuer.

(2) Notwithstanding subsection (1) but subject to subsection 209(1), a registrant may act as an underwriter or selling group member in connection with a distribution of securities of the registrant or a related issuer or connected issuer of the registrant that are securities referred to in subsection 34(2) of the Act (as modified from time to time by any other Part of this Regulation) if before entering into a contract for the purchase of the securities and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract, the registrant,

- (a) ensures that the purchaser has received the statement of policies of the registrant; and
 - (b) makes to the purchaser a full and complete statement of the relationship between the registrant and the issuer of the securities and of the obligations of the registrant under this subsection, which statement shall either be made in writing or orally and promptly supplemented by such a statement in writing.
- (3) Notwithstanding subsection (1),
- (a) clause (1)(a) does not apply in the case of a distribution, otherwise than by means of a prospectus, in which all of the purchasers are related issuers of the registrant purchasing as principal but not as underwriter;
 - (b) clause (1)(b) does not apply in respect of a purchaser that is a related issuer of the registrant purchasing as principal but not as underwriter; and
 - (c) clause (1)(c) does not apply in the case of a distribution in which all of the purchasers are related issuers of the registrant purchasing as principal but not as underwriter.

Commentary

Where an underwriter is underwriting an issue of its own securities or securities of a “related issuer” or a “connected issuer”, section 199 generally requires:

1. a prospectus or offering memorandum that contains comprehensive disclosure of the relationship between the issuer and the underwriter (clause 199(1)(a));
2. that the underwriter deliver its “statement of policies” to its customers (clause 199(1)(b)); and
3. that an independent underwriter — i.e., one for which the issuer is not a “related issuer” or a “connected issuer” — underwrite a portion of the issue that is at least as great as that underwritten by underwriters that are not so independent (clause 199(1)(c)).

In connection with the enactment of Part XII, Forms 12, 13 and 14 are amended to require appropriate disclosure of relationships between underwriters and issuers. The proposed amendments to these Forms are set forth at the end of Part XII.

The effect of clause 199(1)(a) is to require the use of an offering memorandum in the case of a distribution that is exempt from the prospectus requirements of the Act.

The independent underwriter rule contained in clause 199(1)(c) would permit a non-independent underwriter to be a co-lead underwriter, but would not permit it to be a sole lead underwriter, of an issue of its own securities or of securities of a “related issuer” or “connected issuer”.

Where the distribution is of “exempt” securities, whose distribution does not require a prospectus, subsection 199(2) substitutes different disclosure rules for those that would otherwise be applicable under subsection 199(1). These substituted rules are similar to those generally applicable, under subsection 200(1), to secondary market trading. Under subsection 209(1), dealings in “exempt” securities with “designated institutions” are not subject to any of the particular disclosure rules of Part XII.

Subsection 199(3) provides for certain exceptions to subsection 199(1) where the relevant purchasers are “related issuers” of the registrant.

Regulation

Limitations on Trading

200.(1) No registrant shall, as principal or agent, trade in, sell or purchase securities of the registrant or a related issuer of the registrant with, on behalf of, to or from any customer, other than a related issuer of the registrant, or a fully-registered dealer, purchasing or selling as principal, unless, before entering into a contract for the sale or purchase of the securities and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract, the registrant,

- (a) ensures that the customer has received the statement of policies of the registrant; and
 - (b) makes to the customer a full and complete statement of the relationship between the registrant and the issuer of the securities and of the obligations of the registrant under this subsection, which statement shall either be made in writing or orally and promptly supplemented by such a statement in writing.
- (2) Subsection (1) does not apply in circumstances in which section 199 applies.

Confirmation and Reporting of Trades

201.(1) The written confirmation required by subsection 35(1) of the Act to be sent by a registrant in connection with a sale or a purchase of securities shall, in the case of a sale or a purchase of securities of the registrant or a related issuer of the registrant, or, in the course of a distribution, of a connected issuer of the registrant, set forth, in addition to the requirements of subsection 35(1) of the Act, a concise statement of the relationship between the registrant and the issuer of the securities.

(2) If a registrant sends or delivers to a customer or client any report, other than the written confirmation referred to in subsection (1), of any trades in securities that the registrant has made with or on behalf of the customer or client, including any report of trades made by or at the direction of a registrant acting as a portfolio manager, such report shall set forth, in respect of trades in securities of the registrant or a related issuer of the registrant, or, in the course of a distribution, of a connected issuer of the registrant, a concise statement of the relationship between the registrant and the issuer of the securities.

Limitations on Advising

202.(1) No registrant shall act as an adviser in respect of securities of the registrant or of a related issuer of the registrant or, in the course of a distribution, of a connected issuer of the registrant unless,

- (a) in the case of a registrant acting otherwise than as a portfolio manager, the registrant, before advising the client, other than a related issuer of the registrant,
 - (i) ensures that the client has received the statement of policies of the registrant, and
 - (ii) makes to the client a full and complete statement of the relationship between the registrant and the issuer of the securities and of the obligations of the registrant under this clause, which statement shall either be made in writing or orally and promptly supplemented by such a statement in writing; or

Commentary

Subsection 200(1) contains the rules applicable to secondary market trading by registered dealers in their own securities and in securities of “related issuers”. It does not apply to secondary market trading in securities of “connected issuers” of the registered dealer.

Where a registered dealer is trading in securities of a “related issuer”, the registered dealer must:

1. make prior delivery of its “statement of policies” (clause 200(1)(a)); and
2. make prior written disclosure of the relationship between the dealer and the “related issuer” or make prior oral disclosure of that relationship, to be supplemented by written disclosure (clause 200(1)(b)).

Under subsection 35(1) of the Act, registered dealers are required to send written confirmations of trades that contain their relevant particulars, including whether the registered dealer acted as principal or agent. Subsection 201(1) requires that this confirmation reflect as well the relationship of the registered dealer and the issuer, whether it is the dealer or a “related issuer” or, during a distribution, a “connected issuer”.

Subsection 201(2) imposes a disclosure rule with respect to reports of trades sent voluntarily by registrants that corresponds to the disclosure rule in subsection 201(1) applicable to required confirmations.

Subsection 202(1) contains the rules governing advising with respect to securities of the registrant or securities of a “related issuer” or, in the course of distribution, of a “connected issuer”. The subsection distinguishes between a registrant acting in the capacity of a portfolio manager (i.e., an adviser with discretionary authority to determine that a trade in securities be made on behalf of a client) and a registrant not acting in that capacity. It applies both to registered dealers and to registered advisers, as long as they are acting in the capacity of an adviser.

Where a registrant is advising but is not acting as a portfolio manager, clause 202(1)(a) requires that it deliver its “statement of policies” and make appropriate disclosure of the relationship between itself and the issuer prior to giving advice to its client.

Regulation

- (b) in the case of a registrant acting as a portfolio manager, the registrant, before acquiring discretionary authority in respect of the securities and once within each period of 12 months thereafter,
 - (i) ensures that the client has received the statement of policies of the registrant, and
 - (ii) secures the specific and informed written consent of the client to the exercise of the discretionary authority in respect of the securities.
- (2) For purposes of subclause (1)(b)(ii),
 - (a) a general power to invest in the discretion of the portfolio manager does not constitute specific consent; and
 - (b) consent is only informed if the portfolio manager believes and has reasonable grounds for believing that it is informed.

Limitations on Recommendations

203.(1) No registrant shall directly or indirectly recommend, in any circular, pamphlet or other publication or other medium of communication, that securities of the registrant or of a related issuer of the registrant or, in the course of a distribution, of a connected issuer of the registrant, be purchased, sold or held, unless the recommendation is contained in a circular, pamphlet or other similar publication that,

- (a) is published, issued or sent by the registrant and is of a type distributed with reasonable regularity in the ordinary course of its business;
- (b) includes in a conspicuous position, in type not less legible than that used in the body of such publication, a full and complete statement of the relationship between the registrant and the issuer of the securities and of the obligations of the registrant under this subsection;
- (c) includes information similar to that set forth in respect of the issuer of the securities in respect of a substantial number of other persons or companies in the industry or business of the issuer of the securities; and
- (d) does not give materially greater space or prominence to the information set forth in respect of the issuer of the securities than to the information set forth in respect of any other person or company described therein.

(2) No registrant shall publish, issue or send any advertisement, notice or other similar publication in respect of securities of the registrant or a related issuer of the registrant or, in the course of a distribution, of a connected issuer of the registrant, unless such publication contains in a conspicuous position in bold face, 12-point type, or such larger type as is required to ensure its prominence in such publication, a concise statement of the relationship between the registrant and the issuer of the securities.

Limitations on Networking

204.(1) No registrant shall enter into a networking arrangement with a financial intermediary, whether or not the financial intermediary is a registrant or a related issuer of the registrant, unless each registrant that proposes to enter into the networking arrangement gives 30 days' written notice to the Director of its intention to do so, disclosing all relevant facts, and the Director has not informed such registrant within the period of 30 days that he objects to the networking arrangement.

Commentary

Clause 202(1)(b) requires a registrant acting as a portfolio manager, prior to receiving discretionary authority (rather than before exercising it) and annually thereafter, to furnish to its client its “statement of policies” and to secure, to the extent relevant, the consent of the client to the exercise of that discretionary authority with respect to its own securities and securities of “related issuers” and, during a distribution, “connected issuers”.

These obligations placed on portfolio managers are in addition to those placed on them by section 114 of the Act, which applies more narrowly.

Clause 202(2)(a) provides that a registrant acting in the capacity of a portfolio manager does not have the requisite consent of its client to exercise discretion with respect to its own securities and securities of “related issuers” and “connected issuers” where it only possesses a general power of investment. Consent to the specific type of transactions, although not necessarily to the transactions themselves, is required.

Subsection 203(1) prescribes limitations on research reports and similar recommendations by registrants with respect to the purchase, sale or holding of securities of the registrant or “related issuers”, or, in the course of distribution, of “connected issuers”, of the registrant. Subsection 202(1) establishes four conditions to the making of the recommendation:

1. it must be included in a regular publication of the registrant (clause 203(1)(a));
2. the publication must contain a statement of the relationship between the registrant and the issuer (clause 203(1)(b));
3. the publication must discuss, along with the issuer, a substantial number of competitors in the same industry (clause 203(1)(c)); and
4. the publication must not overemphasize the issuer as compared with its competitors (clause 203(1)(d)).

Because subsection 203(1) requires that the research report be published by the registrant, the prohibition against “indirectly” recommending certain securities would prevent a registrant from cooperating with a third party, such as a newspaper or television program, in the dissemination of such recommendations.

Subsection 203(2) deals with the circumstances in which a registrant is permitted to publish an advertisement or similar publication with respect to securities of the registrant, a “related issuer” or, in the course of distribution, a “connected issuer”. The advertisement must contain a concise and legible statement of the relationship between the registrant and the issuer.

Subsection 204(1) requires that a registrant, before entering into a “networking arrangement” (as defined in paragraph 3 of section 194), give 30 days’ notice to the Director. The arrangement may not be proceeded with if the Director objects to it within the 30-day notice period.

Regulation

(2) The Director shall not make any determination pursuant to subsection (1) that he objects to any proposed networking arrangement unless he finds that it would be prejudicial to the public interest in that it,

- (a) is likely to give rise to material conflicts of interest;
- (b) is likely to hinder a registrant in complying with the conditions of registration applicable to it; or
- (c) makes use of a means of offering for sale or selling securities, goods or services that is inconsistent with an adequate level of investor protection.

Directors of Registered Dealers

205.(1) If any person or company, directly or indirectly and whether alone or in combination with one or more other persons or companies, beneficially owns, or exercises control or direction over, more than 10 per cent of any class or series of voting securities of a registered dealer, not less than 33⅓ per cent of the directors of the registered dealer shall be outside directors.

(2) No individual shall serve as an outside director of a registered dealer unless the registered dealer has given 21 days' written notice thereof to the Director and the Director has not informed the registered dealer within the period of 21 days that he objects thereto.

Miscellaneous

206. Each registrant shall file with the Commission such reports as to its activities in respect of its securities and of the securities of related issuers and connected issuers of the registrant as the Commission shall from time to time prescribe.

207.(1) If a registrant fails to comply with section 199, 200, 201, 202 or 203 and thereby fails to make adequate disclosure to a customer or client and, in connection with the failure to comply, the customer or client purchases or sells securities, the customer or client shall be deemed to have relied on such failure to make adequate disclosure and may elect to exercise,

- (a) a right of action for damages against the registrant; or
- (b) a right of rescission against the registrant or, if the customer or client purchased the securities from a person or company other than the registrant, a right to require the registrant to purchase the securities from the customer or client for a consideration equal to the consideration for which the customer or client purchased the securities plus any commission paid by him or, if the customer or client sold the securities to a person or company other than the registrant, a right to require the registrant to sell to the customer or client the same number of securities of the same class and series for a consideration equal to the consideration for which the customer or client sold the securities plus any commission paid by him.

(2) For purposes of subsection (1), a registrant fails to make adequate disclosure to a customer or client where it fails to state a fact that a reasonable customer or client in comparable circumstances would want to know to make an informed investment decision.

Commentary

Subsection 204(2) limits the bases on which the Director may object to a “networking arrangement”.

Where a person or company, or group of persons or companies, owns or controls more than 10 per cent of any class or series of voting securities of a registered dealer, subsection 205(1) requires that one-third of the directors of the registered dealer be “outside directors”, or independent.

Under subsection 205(2), outside directors may serve only if notice of their election (or, in practice, nomination) is given to the Director and he has not objected.

Although the insider trading reports currently required under the Act will ensure public disclosure of certain trades by registrants, as principal and on behalf of managed accounts, in their own securities or securities of “related issuers”, they will not comprehensively require disclosure of registrants’ trades in their own securities and those of all “related issuers” and “connected issuers”. Accordingly, section 206 gives the Commission the power to require appropriate reporting.

Subsection 207(1) gives the customer or client of a registrant a remedy where the registrant has breached one of the specific disclosure rules in Part XII and that breach amounts to a failure to make adequate disclosure. In these circumstances, the customer or client may elect between, on the one hand, a remedy in damages or, on the other hand, a right of rescission or similar right to reverse the transaction in respect of which he was not properly informed by the registrant.

Clause 207(1)(b), which deals with the alternative to a remedy in damages, takes account of the fact that the customer or client may or may not have traded with the registrant acting as principal. Where the registrant acted as principal, clause (b) gives the customer a right of rescission. Where the registrant acted otherwise, clause (b) gives the customer or client the right either to “put” the securities to the registrant or to “call” the securities from the registrant; such a right is required to put the customer or client in the same position in which he would have been if he had not entered into the transaction.

Subsection 207(2) defines the failure to make adequate disclosure, which is a prerequisite for a customer or client to avail himself of the remedies provided by subsection 207(1). A “reasonable man” test is applied.

Regulation

(3) No registrant is liable under subsection (1) if it proves that the customer or client purchased or sold, as the case may be, the securities with knowledge of the undisclosed fact.

(4) The rights conferred on a customer or client by this section are in addition to and without derogation from any right the customer or client may otherwise have under the Act, any other provision of this Regulation or at law.

208.(1) The obligations imposed by this Part on a registrant and any director, officer, partner or salesman of a registrant are in addition to and without derogation from any obligation the registrant or the director, officer, partner or salesman may otherwise have under the Act, any other Part of this Regulation or at law.

(2) The obligations imposed by sections 196 and 197 on a registrant or any director, officer, partner or salesman of a registrant are not necessarily satisfied solely by virtue of compliance with the other applicable provisions of this Part.

209.(1) This Part, other than sections 196 and 197, does not apply to any trade in, purchase or sale of, or advising with respect to, securities referred to in subsection 34(2) of the Act (as modified from time to time by any other Part of this Regulation) where the customer or client of the registrant is a designated institution.

(2) Subsection 196(2) and section 205 do not apply to,

- (a) a financial intermediary dealer;
- (b) an international dealer; or
- (c) a security issuer.

(3) Section 198, clauses 199(1)(b) and (c), section 200, section 201, section 202, subsection 203(1) and section 204 do not apply to an international dealer.

(4) Subsections 196(1) and 197(1) apply to a financial intermediary dealer, an international dealer and a security issuer and its directors, officers and partners only in respect of trades in, purchases and sales of, and advising with respect to, securities.

210. The Commission may exempt a registrant from the requirements of any provision of this Part where it is satisfied that to do so would not be prejudicial to the public interest and in granting such exemption the Commission may impose such terms and conditions as are considered necessary.

Commentary

Subsection 207(3) provides the registrant with a defence if the customer or client was aware of the undisclosed fact.

Sections 199 to 203 contain detailed rules with respect to the obligations of registrants in particular cases where they underwrite, trade in the secondary market in, advise in respect of, or recommend, the securities of “related issuers” or “connected issuers” or their own securities. In addition to these rules, however, the general standards imposed by sections 196 and 197 on registrants and their directors, officers, partners and salesmen apply to these particular transactions. Subsection 208(2) makes it clear that those general standards also apply in the particular circumstances addressed by sections 199 to 203 and, as a result, may require that registrants do more than simply comply with the detailed rules in the applicable section.

Where the activities of registrants that are otherwise subject to the particular disclosure rules of Part XII are in respect of “exempt” securities and the registrants’ customers or clients are “designated institutions” (as defined in paragraph 1 of section 177), subsection 209(1) provides that those particular rules do not apply. The general standards of sections 196 and 197 are, however, applicable in these circumstances.

Subsection 209(2) provides that the self-dealing rule and the requirement for outside directors do not apply to financial intermediary dealers, which are otherwise regulated in this regard, or to international dealers, whose connection to the domestic capital markets is peripheral, or to security issuers.

Subsection 209(3) does not exempt international dealers from complying with the prospectus and offering memorandum requirements of clause 199(1)(a) in connection with trades in non-“exempt” securities to “designated institutions” in the course of a “distribution primarily abroad”, which are permitted activities of international dealers under clause 180(1)(b).

Subsection 209(4) provides that the general standards in subsections 196(1) and 197(1) apply only in respect of the securities customers of financial intermediary dealers and security issuers and not of customers of other products or services offered by those registrants.

C. AMENDMENTS TO FORMS 12, 13 AND 14 OF THE REGULATION

Form 12

ITEM 29A — Relationship Between Issuer and Underwriter:

Where the issuer is a related issuer or connected issuer of an underwriter, state in bold face type on the first page of the prospectus a summary of the nature of the relationship between the issuer and the underwriter and the appropriate cross-reference to the information in the prospectus describing the relevant facts. In that section, describe fully:

- (a) the nature of the existing relationship between the issuer and the underwriter and each related issuer of the underwriter;
- (b) the involvement of the underwriter and of any related issuer of the underwriter in the decision to distribute the securities being offered and the determination of the terms of the distribution; and
- (c) the effect of the issue on the underwriter and each related issuer of the underwriter.

INSTRUCTIONS:

1. “Related issuer” and “connected issuer” are defined in section 194 of the Regulation.
2. In describing the existing relationship between the issuer and the underwriter and each related issuer of the underwriter, describe the basis on which the issuer is a related issuer or connected issuer of the underwriter and include:
 - (a) the name of each relevant related issuer of the underwriter;
 - (b) the details of any beneficial ownership of, or exercise of control or direction over, any securities of any relevant party (including the issuer, the underwriter and any related issuer of the underwriter) by any other relevant party;
 - (c) the details of the ability of any relevant party to participate in or to affect materially the operations of any other relevant party by virtue of representation on a board of directors, a management contract, an escrow or pooling or voting trust agreement, or any other means;
 - (d) the details of any business or professional relationship between relevant parties; and
 - (e) where the issuer has any indebtedness to any related issuer of the underwriter, state the details including:
 - i. the amount of the indebtedness;
 - ii. the extent to which the issuer is in compliance with the terms of any agreement governing the indebtedness;

Commentary

In conjunction with the enactment of Part XII and in particular with the disclosure and other rules contained in subsection 199(1) with respect to an underwriter distributing its own securities or those of “related issuers” or “connected issuers”, Forms 12, 13 and 14 are amended to specify in detail the information that must be disclosed in those circumstances.

Item 29A of Form 12 is a new item that will require, in the case of an issue by an industrial company, detailed disclosure of the relationship between the issuer and each underwriter where the issuer is a “related issuer” or a “connected issuer” of the underwriter. Item 32A of Form 13 and item 29A of Form 14 will be identical items that apply in the case of an issue by a finance company or a natural resource company, respectively.

Item 29A requires a summary statement in bold face type on the first page of the prospectus of the relationship between the issuer and the underwriter. Item 29A also requires detailed disclosure of the relevant aspects of the relationship in the body of the prospectus.

The term “relevant party”, when used in connection with an instruction, requires disclosure of information with respect to each entity that is relevant to the description of the relationship of the issuer to the underwriter.

Instruction 2(e) requires comprehensive disclosure of the relevant facts where an underwriter is distributing securities of an issuer that is a borrower from the parent of, or other “related issuer” of, the underwriter.

Regulation

- iii. the extent to which the related issuer has waived any breach of any such agreement since its execution;
 - iv. the nature of the security for the indebtedness; and
 - v. the extent to which the financial position of the issuer or the value of the security has changed since the indebtedness was incurred.
3. In describing the involvement of the underwriter and any related issuer of the underwriter in the decision to distribute the securities being offered and the determination of the terms of the distribution, describe:
- (a) whether the issue was required, suggested or consented to by any related issuer of the underwriter and, if so, on what basis; and
 - (b) where the issuer is a related issuer of the underwriter, the basis on which arrangements with the underwriter, including the settling of its commission, were determined.
4. In describing the effect of the issue on the underwriter and each related issuer of the underwriter, state the extent to which the proceeds of the issue will be applied, directly or indirectly, for the benefit of the underwriter or any related issuer of the underwriter and, where the issuer has any indebtedness to any related issuer of the underwriter, whether any of the indebtedness will be repaid from the proceeds of the issue and, if so, the amount of the repayment. Where the proceeds will not be applied for the benefit of the underwriter or any related issuer of the underwriter, so state.
5. State any other material facts with respect to the relationship between the underwriter, any related issuer of the underwriter and the issuer that are not required to be described by the foregoing.

ITEM 29B — Underwriter as Issuer:

Where a non-reporting issuer issuing voting securities or participating securities is a registered dealer or an issuer a substantial portion of whose assets are securities of a registered dealer and the dealer is one of the underwriters of the issue, state that fact in bold face type on the first page of the prospectus, state in the prospectus summaries of two valuations of the issuer by two independent underwriters or chartered accountants, and state a reasonable time and place at which the valuations may be inspected during the distribution of the securities being offered.

INSTRUCTIONS:

1. “Participating security” is defined in section 184 of the Regulation and “valuation” is defined in section 164 of the Regulation.
2. Underwriters or chartered accountants are independent if they are not related issuers or connected issuers of the issuer. See item 29A. Participation in the distribution does not disqualify underwriters that are otherwise independent.

ITEM 5 — Use of Proceeds:

- (c) Where the issuer is a related issuer or connected issuer of an underwriter, state a summary of the nature of the relationship between the underwriter and the issuer and state the extent to which the proceeds of the issue will be applied, directly or indirectly, for the benefit of the underwriter or any related issuer of the underwriter. Where the proceeds will not be applied for the benefit of the underwriter or any related issuer of the underwriter, so state. Make a cross-reference to the information in the prospectus required by item 29A.

INSTRUCTIONS:

5. See item 29A.

Commentary

Instruction 4 specifically requires disclosure where the effect of the issue is, directly or indirectly, to benefit the underwriter or any “related issuer” of the underwriter. One of these cases is that in which an underwriter distributes the securities of an issuer that is a borrower from the parent of the underwriter and the proceeds of the issue are applied in repayment of the indebtedness of the issuer to the parent of the underwriter.

Instruction 5 clarifies that every material aspect of the relationship between the underwriter and the issuer must be disclosed, whether or not it falls within the matters specifically addressed by item 29A.

The by-laws of the self-regulatory organizations currently require that, in certain cases of issues by members of their own securities, the prospectus contain valuations of the issuer by two independent underwriters or chartered accountants. Item 29B of Form 12 embodies this rule. Item 32B of Form 13 and item 29B of Form 14 will be identical items that apply in the case of an issue by a finance company or a natural resource company, respectively.

Item 5 of each of Forms 12, 13 and 14 is amended specifically to deal with the question of the extent to which the proceeds of an issue will be applied for the benefit of the underwriter or any “related issuer” of the underwriter.

D. AMENDMENTS TO PART III OF THE REGULATION

PART III

PROSPECTUS REQUIREMENTS

Further Exemptions

14.(d) Clause 14(d) is revoked.

Restriction of Exemptions

19e.(1) The exemption contained in paragraph 5 of subsection 34(1) of the Act and the corresponding exemption contained in clause 71(1)(d) of the Act are unavailable where the trade is in a security which has an aggregate acquisition cost to the purchaser of less than \$250,000.

19e.(2) Subsection (1) does not apply to a distribution of securities made before January 1, 1989 if the securities were distributed in reliance upon clause 71(1)(d) before February 27, 1987.

19f. The exemption contained in paragraph 5 of subsection 34(2) of the Act and the corresponding exemption referred to in clause 72(1)(a) of the Act are unavailable where the trade is in negotiable promissory notes or commercial paper that are not rated at least R1 by Dominion Bond Rating Service or A1 by Canadian Bond Rating Service or such other rating recognized by the Commission.

19g. The exemption contained in paragraph 3 of subsection 34(2) of the Act and the corresponding exemption referred to in clause 72(1)(a) of the Act are unavailable where the trade is in securities issued by a private mutual fund as defined in sub-subparagraph (a) of subparagraph ii of paragraph 32 of subsection 1(1) of the Act.

Commentary

Section D

The revocation of clause 14(d) and the addition of section 19g effectively repeal the prospectus exemptions applicable to certain mutual funds administered by a trust company. These changes are being made in conjunction with the implementation under Part X of the universal registration system, which will require that trust companies that trade in the securities of these funds be registered.

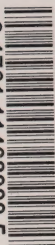
Subsection 19e(1) changes the “private placement” exemptions from the registration and prospectus requirements of the Act. The subsection increases from \$97,000 to \$250,000 the minimum aggregate acquisition cost which must be paid by a purchaser to permit a trade to be made without a prospectus or registration in reliance upon this exemption.

Subsection 19e(2) provides a transitional rule to permit resales without a prospectus of securities having an aggregate acquisition cost of not less than \$97,000 if the original distribution in reliance upon the exemption occurred before the date of this publication and the subsequent distribution in question occurs before January 1, 1989.

Section 19f requires negotiable promissory notes and commercial paper to be highly rated to permit a trade in them to be made without a prospectus or registration.

See the commentary above with respect to clause 14(d).

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